

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

JOSEPH F. SMITH	§	
VS.	§	CIVIL ACTION NO. 1:06cv597
UNITED STATES OF AMERICA	§	

MEMORANDUM OPINION AND ORDER

Movant Joseph F. Smith, an inmate confined in the Federal Medical Center in Springfield, Missouri, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. A final judgment has not been entered in this action.

Movant has filed a notice of appeal. Before movant can appeal the judgment, however, a certificate of appealability (COA) must issue. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Interpreted liberally, movant's notice of appeal is construed as a motion for certificate of appealability.

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Barefoot v. Estelle*, 463 U.S. 880 (1982); *Butler v. Byrne*, 845 F.2d 501, 505 (5th Cir. 1988). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327.

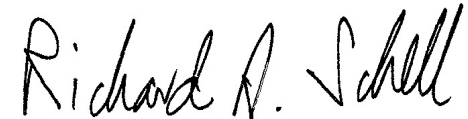
If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable (1) whether the petition raises a valid claim of the denial of a constitutional right and (2) whether the district court was correct in its procedural ruling. *Slack v.*

McDaniel, 529 U.S. 473, 478 (2000). The court must either issue a certificate of appealability indicating which issues satisfy the required showing, or must state the reasons why such a certificate should not issue. FED. R. APP. P. 22(b).

In this case the standards for issuance of a certificate of appealability are not met. Accordingly, the court is of the opinion that a certificate of appealability should not issue in this case. It is therefore

ORDERED that movant's motion for a certificate of appealability is **DENIED**.

SIGNED this the 8th day of April, 2010.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The middle initial "A." is written in a smaller, simpler script. The last name "Schell" is written with a large, prominent "S" and a long, sweeping tail that extends to the right.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE